

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MORENO VALLEY UNIFIED SCHOOL  
DISTRICT AND RIVERSIDE COUNTY  
OFFICE OF EDUCATION.

OAH CASE NO. 2011100077

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On September 30, 2011, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) against the Moreno Valley Unified School District (District) and Riverside County Office of Education (RCOE). On October 12, 2011, the District and RCOE filed a Notice of Insufficiency (NOI) as to Student's complaint. On October 14, 2011, the Office of Administrative Hearings (OAH) granted the District's and RCOE's NOI and gave Student 14 days to file an amended complaint.

On October 27, 2011, Student filed an amended complaint. On November 8, 2011, the District and RCOE filed a Notice of Insufficiency (NOI) as to Student's amended complaint.<sup>2</sup>

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.<sup>3</sup> The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of title 20 United States Code section 1415(b)(7)(A).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed

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<sup>1</sup> A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 United States Code section 1415(b)(7)(A).

<sup>2</sup> RCOE's motion to dismiss will be addressed in a separate order.

<sup>3</sup> 20 U.S.C. § 1415(b) & (c).

resolution of the problem to the extent known and available to the party at the time.<sup>4</sup> These requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.<sup>5</sup>

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”<sup>6</sup> The pleading requirements should be liberally construed in light of the broad remedial purposes of the Individuals with Disabilities Education Act and the relative informality of the due process hearings it authorizes.<sup>7</sup> Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.<sup>8</sup>

## DISCUSSION

Student’s complaint contains ten issues for hearing regarding the District’s and RCOE’s alleged failure to meet his unique needs regarding his hearing impairment, restricting Student’s use of American Sign Language (ASL), not implementing his last agreed upon and implement individualized education program (IEP), and failing to assess Student in all areas of suspected disability.

As to Issue 1, Student alleges that the District and RCOE failed to make a clear and appropriate offer in the January 15, March 5, June 1, and August 10, 2010 IEPs. Student’s amended complaint is not sufficiently pled, as it is more of a law review article explaining the legal requirements of an IEP, instead of a clear explanation why the IEPs filed to provide Student with a FAPE and require the District and RCOE to guess which facts relate to Student’s contentions that they denied Student a FAPE. (*Student v. Valley Center Union School District* (2009) Cal.Ofc.Admin.Hrngs. Case No. 2009010785.) Student should

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<sup>4</sup> 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

<sup>5</sup> See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

<sup>6</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>7</sup> *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3 [nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3 [nonpub. opn.].

<sup>8</sup> Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

simply allege the specific IEP at issue, why the IEP does not provide Student with a FAPE and the purported procedural violation, and leave the legal brief to closing arguments. Therefore, Issue 1 is insufficiently pled.

In Issue 2, Student alleges sufficient facts that the District's and RCOE's IEP offers regarding audiological, occupational therapy, speech and language, deaf and hard of hearing and supplementary services were not sufficiently clear offers of service.

In Issue 3, Student alleges sufficient facts that the District and RCOE failed to implement Student's June 2009 IEP, which is the last agreed upon and implement IEP as the amended complaint details how the District and RCOE failed to implement the June 2009 IEP as to speech and language audiological services.

In Issue 4, Student alleges sufficient facts that the District and RCOE changed his placement and services without first obtaining parental consent as the amended complaint sets forth the alleged placement and service changes that occurred without parental consent.

In Issue 5, Student alleges sufficient facts that the District and RCOE failed to adequately assess his social and emotional deficits as the amended complaint sets forth his deficits and why the District and RCOE failed to adequately assess him.

In Issue 6, Student alleges sufficient facts that the District and RCOE failed to make an IEP offer that provided FAPE in the least restrictive environment because the District and RCOE failed to permit Student to use ASL as a form of communication. Additionally, the amended complaint contains sufficient allegations regarding the District's and RCOE's failure staff, assessors and service providers who appropriate knowledge, experience or skills on working with deaf and hard of hearing students.

In Issue 7, Student alleges the District and RCOE failed to implement his IEP by not providing him speech and language therapy. While Student made the same allegations in Issue 3, Issue 7 is sufficiently pled. However, if Student files a second amended complaint, Student should consider combining Issues 3 and 7.

In Issue 8, Student alleges the District and RCOE failed to provide him with audiological services, as similarly alleged in Issue 3. While Student made the same allegations in Issue 3, Issue 8 is sufficiently pled. However, if Student files a second amended complaint, Student should consider combining Issues 3 and 8.

In Issue 9, Student alleges sufficient facts that the District and RCOE failed to consider his unique communication needs in developing their IEP offers during the past two years.

In Issue 10, Student alleges sufficient facts that the District's and RCOE's January 2010 and January 2011 IEPs did not contain adequate goals to address his unique needs as to his hearing deficits.

Student's proposed resolutions requests specified areas of compensatory education, an independent educational evaluation and that the District and RCOE develop an educational program to provide Student with FAPE. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) The proposed resolutions stated in Student's amended complaint are well-defined, and therefore meet the statutorily required standard of stating a resolution to the extent known and available at the time.

Issues 2 through 6, 9 and 10 are sufficiently pled to put the District on notice as to the basis of Student's claims to permit the District to respond to the complaint and participate in a resolution session and mediation.

With regard to Issue 1, Student fails to allege sufficient facts supporting these claims to put the District on notice, and therefore these claims are insufficient.

#### ORDER

1. Issues 2 through 6, 9 and 10 of Student's amended complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issue 1 of Student's amended complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).

3. Student shall be permitted to file a second amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).<sup>9</sup>

4. The second amended complaint shall comply with the requirements of title 20 United States Code section 1415 (b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

5. If Student fails to file a timely second amended complaint, the hearing shall proceed only on Issues 2 through 10 in Student's amended complaint.

Dated: November 9, 2011

/s/  
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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>9</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing.